



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
MISCELLANEOUS CAUSE NO. 965 OF 2011

NJOROGE REGERU & CO. ADVOCATES:.....:APPLICANT

- VERSUS -

EXPLORER HOLDINGS LIMITED:.....:1ST RESPONDENT

MICHAEL MWONGERA ARIMBI :.....:2ND RESPONDENT

R U L I N G

1. Before the court are two Notice of Motions applications dated **19th April 2013** by the Respondents (herein called the **1st application**) and the one dated **26th July 2013** (herein called the **2nd application**) by the Advocates.
2. The application seeks the following orders:-
 1. *That this application be certified urgent and service be dispensed with in the first instance.*
 2. *That pending the hearing and final determination of this application, a temporary injunction be issued restraining the Applicants/Advocates, their servants or agents from executing the decree, attaching, advertising for sale or selling the Respondent's movable or immovable property.*
 3. *That an injunction be issued restraining the Applicants/Advocates, their servants or agents from executing the decree, attaching, advertising for sale or selling the Respondent's movable or immovable property*
 4. *That this Honourable Court be pleased to allow the Respondents/Clients to liquidate the amount of Kshs.2,450,500/= as taxed in this case, in equal monthly installments of Kshs.100,000/= till payment in full.*
 5. *That this Honourable court be pleased to grant any other order suitable in the circumstances.*
 6. *That the costs of this application be in the cause.*
3. The application is based on the grounds set out therein and mainly that the Applicant fears that the Respondent will execute the decree arising from the taxed bill of costs amounting to

Kshs.2,450,000/=. While the Applicant does not object to the said bill of taxation the Applicants states that they are not in a financial position to pay the same and now seeks the leave of this court to liquidate the same by installments of Kshs.100,000/= per month till repayment in full. The application is supported by affidavit of **MICHAEL MWONGERA ARIMBI** dated **19th April 2013** together with its annexures. In the said affidavit the Applicant states the deplorable economic circumstances he is facing including the fact that he is not employed and that his businesses are not doing well and that if ordered to pay the entire decretal sum the Applicant would go under or be unable to comply.

4. The application is opposed by a replying affidavit sworn by **MWANGI KARUME** an advocate in the firm of the 2nd Applicant Company. The affidavit is dated 17th May 2013 with annexures. They oppose the application on the basis that it is pre-mature as they have not been able to extract the Certificate of Taxation and there is no Judgment, and that until Judgement is entered in the matter, this application cannot be entertained.

Further the Respondent states that an injunction cannot issue against an advocate who is entitled to fees after carrying out his client's instructions. In any event, the Advocate/Applicant states that the Respondent has not complied with the initial promise to pay Kshs.100,000/= as deponed in his affidavit dated 19th April 2013. The advocates also states that the Respondent is a well known wealthy businessman and is capable of paying the entire decretal sum. The advocate is however prepared to accept a lump sum payment of Kshs.1,000,000/= and monthly installments of Kshs.100,000/=.

5. The 2nd Notice of Motion is dated 26th July 2013 and seeks the following orders:-
 - a. ***The sum of Kshs.2,450,500/= as per the Certificate of Taxation dated 3rd June 2013.***
 - b. ***Interest on the said sum of Kshs.2,450,500/= at the commercial rates prevailing from time to time from 8th April 2013 until payment in full.***
 - c. ***The Applicant be granted leave to execute the said Judgement against Respondents.***

The application is based on the grounds that:-

1. ***The Applicant received instructions from the Respondent to act on behalf of the Respondent in sale transaction being purchase of LR No. 20683 and LR No. 20686, Nanyuki Municipality.***
2. ***The Respondent failed, refused and/or otherwise neglected to pay the Applicant's fees necessitating the taxation of the advocate-client costs.***
3. ***The advocate-client costs were taxed on 8th April 2013, and allowed at Kshs.2,450,500/= and a Certificate of Taxation issued on 3rd June 2013.***
4. ***There is no appeal against the decision of the Taxing Officer or a dispute as to instructions.***
5. ***Demand for the taxed costs has been issued but the Respondent has declined, refused and/or otherwise neglected to pay the taxed costs being the advocate/client costs for the professional services rendered to the Respondent.***
6. The application is supported by the affidavit of **MWANGI KARUME** dated **26TH July 2013** which expounds on the said grounds.
7. The 1st Applicant/Respondent has opposed the application by filing grounds of opposition in court on 5th November 2013. The Respondent's opposition is simply that this application was unnecessary as the Respondents were not disputing the Applicant's fees. In the Respondent's

view this application merely increases costs in the proceedings unnecessarily.

8. I have considered both applications and submissions of the parties. I will deal with the 2nd application first. This application is not seriously opposed. In any event, the application is supported by a certificate of costs, and since there is no serious oppositions to the same, I will allow it in the following terms:-

i. ***That Judgement is hereby entered for the Applicant against the Respondent for:-***

a. ***The sum of Kshs.2,450,500/= as per the Certificate of Taxation dated 3rd June 2013.***

b. ***Interest on the said sum in (a) above at 14% per annum.***

c. ***Parties to bear own costs.***

9. For the 1st application, the cardinal rule is that an Applicant seeking to pay a debt by installment must lay a basis for the same. A party who claims that his business is not making profits, and that his financial position is not good, must demonstrate the same by showing some financial accounts to demonstrate the claim. The application does not contain any documents to support the claim, and is unbelievable. However, I am prepared to be gracious to the Applicant, and in that regard I will accept the submissions of the advocate that if this court is prepared to grant the prayer to liquidate the Judgement herein by installments, then the Applicant should pay Kshs.1,000,000/= as a lump sum. I therefore make orders as follows:-

a. ***The Respondent/client is hereby allowed to liquidate the amount of Kshs.2,450,500/= as taxed in this case by paying a lump sum of Kshs.1,000,000/= to the Applicant/Advocate within 30 days from the date of this Ruling.***

b. ***That the Respondent/Client shall pay the balance of the decretal sum including costs and interests by a monthly installment of Kshs.100,000/= with effect from 1st April 2014 until payment in full thereof.***

c. ***The costs of this application shall be for the Advocate/Applicant.***

DATED, READ AND DELIVERED AT NAIROBI THIS 27TH DAY OF JANUARY 2014

E. K. O. OGOLA

JUDGE

PRESENT:

M/s Ngondu for Applicant

Millimo holding brief for M/s Waiganjo for Respondents

Teresia – Court Clerk